

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5646 of 1997

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN and Sd/-
MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

U P KANGAD

Versus

GOVERNMENT OF GUJARAT

Appearance:

TANNA ASSOCIATES for Petitioner
MR DA BAMBHANIA for Respondent No. 1, 3, 4 to 7
MR SH SANJANWALA with MR RS SANJANWALA for
Respondent No. 2

MR KS NANAVATI for Respondent No. 8

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE M.S.SHAH

Date of decision: 26/12/97

CAV JUDGEMENT (Per Shah, J.)

This petition under Article 226 of the
Constitution is a public interest petition filed by the

Mayor of the Rajkot Municipal Corporation making a grievance against interference by the Ministers of the State of Gujarat in due discharge of duties by the upright and responsible police officers like respondent No. 9 - Shri Satish Varma and challenging the order of transfer of respondent No. 9 from Rajkot as illegal, malafide and as a result of undue interference shown by respondent No. 4 - Shri Vithalbhai Radadiya and respondent No. 5 - Shri Popat Jinzaria, both Ministers of the State of Gujarat and also to direct the respondent - Government to issue guidelines as to what extent the instructions of Ministers and/or MLAs be legitimately followed or passed on to the civil servant and also for providing guidelines for channel for politicians and MLAs and Ministers for issuing instructions to the civil servants not belonging to their department.

2. The petition filed by the first citizen of Rajkot is founded allegations of two specific incidents in respect of which it is alleged that respondent No. 9 did not follow the illegal instructions issued by and at the behest of respondent Nos. 4 and 5. It is submitted that respondent No. 9 being a upright police officer has followed his call of duty and declined to act otherwise in accordance with law and, therefore, respondent Nos. 4 and 5 sought to punish respondent No. 9 and succeeded in getting respondent No. 9 transferring out by prevailing over respondent No. 2 and the State Government machinery.

It is submitted that respondent No. 9 might have taken the transfer in his stride but it did give a signal to the other officers that if they do not toe the illegal instructions and attempts of the Ministers and MLAs, how they would be dealt with and it has been a premium to the violators of law who were earlier under constant vigilant control of respondent No. 9.

3. The incidents in question referred to by the petitioner are as under :-

The first incident relates to an offence registered at Dhoraji Police Station as C.R. No. 168 of 1997 against Shri Ranchod Koyani under Section 307 IPC for attempt to murder Vinoo Gordhanbhai Antala. Respondent No. 9 arrested the said accused on 16.6.1997. According to the petitioner, the accused is the President of Doraji Municipality i.e. from an area where respondent No. 4 - Shri Radadiya hails as an MLA and both belong to the ruling party, hence the police authorities were instructed not to arrest the said

offender; but respondent No. 9 discharged his duty fearlessly and arrested the said accused on 16.6.1997 in connection with the aforesaid offence, and, therefore, as mentioned in the newspapers reports, respondent No. 4 was offended by the aforesaid arrest of Shri Koyani.

The second incident relates to C.R. No. 25/97 registered with Vankaner Police Station. One Devshi Valji Sapara of Zudakhada village of Vankaner taluka and one Hussein Ali of Mesaria village of Vankaner taluka were accused of power theft to the tune of Rs. 45,000/-. Hence, the Deputy Executive Engineer of the Gujarat Electricity Board lodged the aforesaid complaint on 8.1.1997 for the offences punishable under Section 379 of IPC and Section 39 of the Indian Electricity Act. According to the petitioner, the aforesaid offence was being investigated by PSI Shri Solanki who found that sufficient evidence existed against the aforesaid two accused. According to the petitioner, respondent No. 5 who is a Minister and who hails as an MLA from Vankaner has seen to it that respondent No. 6 - Director General of Police posted PSI Shri C L Gurkha on the aforesaid post in place of Shri Solanki, in contravention of the normal practice that a PSI is assigned to a district and then the DSP gives him a detailed posting. However, respondent No. 6 straightaway transferring and posted PSI Shri Gurkha to the Vankaner Police Station. It is submitted that respondent No. 5 was thus instrumental in getting Shri Gurkha posted at Vankaner and the said PSI remained under supervision of respondent No. 5 hailing from Vankaner. It is further alleged that respondent No. 5 did not rest content with the aforesaid transfer, but wielding his influence with respondent No. 2, the then Chief Minister of the State, got Shri C.J. Chavda, Officer on Special Duty (Respondent No. 8) in the office of the then Chief Minister to issue letter dated 13.5.1997 directly to Shri Gurkha, PSI, Vankaner and District Superintendent of Police, Rajkot (Respondent No. 9) for filing "C" summary in respect of the aforesaid criminal case No. CR 25/97.

A copy of the letter was also shown to the Court at the time of hearing. The letter reads as under:-

No. UMK-NVS-397

Office of the Chief

Minister, Sardar Bhavan,
Sachivalaya, Block No.
1, 5th Floor, Gandhinagar
382 010.

C.J. Chavda

Officer on Special Duty 13 MAY 1997

A police case is filed against Shri Devshibhai Valjibhai Sapara of Kudakhada village and against Shri Husseinbhai Alibhai of Mesaria village of Vankaner Taluka in Rajkot district. "C" summary be filed in the said case and the compliance be reported to this office.

Sd/-

(C.J. Chavda)

Officer on Special Duty

To,

The District Suptd. of Police,
Rajkot Rural, Rajkot.

It is further stated that since respondent No. 9 had found that there was sufficient evidence to proceed against the aforesaid two accused, respondent No. 9 instructed PSI Shri Gurkha, In-charge of Vankaner Police Station not to follow the aforesaid instructions contained in the letter dated May 13, 1997 of respondent No. 8 - Shri C.J. Chavda and respondent No. 9 further instructed Shri Gurkha to proceed in accordance with law and not to file "C" summary as there was sufficient evidence against the aforesaid two accused. It is further averred that Shri Gurkha was eager and willing to oblige the Minister - respondent No. 5 hailing from Vankaner and, therefore, he did not carry out the instructions issued by respondent No. 9 but proceeded to file "C" summary in the aforesaid criminal case. Hence, respondent No. 9 suspended Shri Gurkha on July 9, 1997. The petitioner has averred that on account of the allegiance owed by Shri Gurkha to respondent No. 5 sitting minister, not only respondent No. 5, but even the Home Secretary (Respondent No. 3), the Director General of Police (Respondent No. 6) and Deputy Inspector of Police (Respondent No. 7) also issued instructions in writing to respondent No. 9 to review and revoke the suspension order of aforesaid Shri Gurkha. It is further submitted that respondent No. 9 has been acting in a upright and firm manner and did not succumb to the aforesaid pressures.

4. It is further averred that in view of the above, respondent Nos. 4 and 5 wielded their influence with respondent Nos. 2, 3, 6, 7 and 8 and got respondent No. 9 transferred from the post of District Superintendent of

Police, Rajkot (Rural), Rajkot. It is submitted that respondent No. 9 had succeeded in bringing law and order situation under control in Rajkot (Rural) district and, therefore, the people of Rajkot who had heard a sigh of relief during his short tenure of 7 months have a right to make a grievance against such political interference with the upright police officers. It is further submitted that if the Court does not interfere with such malafide transfer orders occasioned by political interference, the public servants will be demoralized. Hence, the present public interest petition by the first citizen of Rajkot.

5. In response to the notice issued by this Court in June, 1997, affidavit-in-reply was filed by Shri P.G. Ramrakhiani, Additional Chief Secretary to the Government of Gujarat, Home Department on September 2, 1997 and thereafter by Shri Shankersinh Vaghela, respondent No. 2, the then Chief Minister of the State on November 20, 1997 and by Shri C.J. Chavda, respondent No. 8, the then Officer on Special Duty in the office of the Chief Minister also on November 20, 1997.

In none of the affidavits, there is any denial about filing of the aforesaid two complaints and the facts about arrest of Shri Ranchhod Koyani by respondent No. 9 on 16.6.1997 and the fact that respondent No. 8 Shri C.J. Chavda had written letter dated May 13, 1997 to respondent No. 9 and PSI Shri Gurkha for filing "C" summary in C.R. No. 25/97 registered with Vankaner Police Station. It is not disputed that PSI Shri Solanki who was investigating the aforesaid crime (CR No. 25/97) had found sufficient evidence against the accused. The fact that PSI Shri Gurkha was suspended by respondent No. 9 on July 9, 1997 after Shri Gurkha acted on the letter dated 13.5.1997 of respondent No. 8 - Shri C J Chavda is also not disputed.

The fact that Shri Gurkha was given direct posting as a PSI at Vankaner Police Station without such posting being made through respondent No. 9 is also not disputed. It is, however, submitted that the Director General of Police has the power to issue transfer of Police Inspectors/Police Sub Inspectors on his own without consulting the concerned DSP.

As regards the letter dated May 13, 1997 written by respondent No. 8 - Shri C.J. Chavda and filing of "C" summary by PSI Shri Gurkha, and the alleged pressure to revoke the order of suspension of PSI Shri Gurkha, the

Additional Chief Secretary has stated as under in his affidavit-in-reply dated September 2, 1997 :-

"I submit that whether the Respondent No. 8 was justified in writing a note to the D.S.P., Rajkot, for filing C-Summary is a matter of scrutiny before the Government. I submit that disciplinary inquiry has been initiated against the Police Sub-Inspector for filing C-Summary. I submit that when grievance was made to me against suspension of Shri Gurkha by the DSP, Rajkot (Rural), I had telephoned Respondent No. 9 in order to apprise of the factual position that led him to passing an order of suspension. I submit that the disciplinary inquiry is at the stage of Head of the office level at Rajkot, with which the Government at present is not concerned."

It is further submitted that respondent No. 3 Additional Chief Secretary, Home Department had not issued any written instruction and/or oral instruction to respondent No. 9 to revoke the order of suspension of Shri Gurkha, but there was only conversation between the Additional Chief Secretary, Home Department and respondent No. 9 wherein the Additional Chief Secretary wanted to be appraised of facts leading to the suspension of Shri Gurkha, which might be misinterpreted by respondent No. 9.

It is further submitted that transfer of respondent No. 9 is neither at the behest of any of the political personalities nor at the behest of respondent Nos. 4 and 5. It is submitted that respondent No. 9 and eleven other officers of the rank of DSPs. have been transferred and that the said decision was taken in accordance with the rules of business. It is submitted that respondent No. 2 was at the relevant time Chief Minister holding the port folio of Home Department and, therefore, respondent No. 2 and the then Minister of State for Home Department had participated in the proceedings for taking decision regarding transfer of police officers including respondent No. 9.

6. Respondent No. 2 - Shri Shankersinh Vaghela, the then Chief Minister has filed his affidavit-in-reply dated 20.11.1997 denying the allegations of mala fides. As far as the letter dated May 13, 1997 from respondent No. 8 - Shri C.J. Chavda, the then Officer on Special

Duty in his office, respondent No. 2 has stated as under :-

"I cannot say anything about the said letter, but I have not exercised any influence. It is, therefore, incorrect to say that any influence was exercised."

7. Respondent No. 8 - Shri C.J. Chavda in his affidavit dated November 20, 1997 has stated as under as regards the aforesaid letter dated May 13, 1997.

"I say that I am not dealing with the petition on merits or writing of alleged letter dated 13.5.97 since the said matter is under scrutiny before the Government and it will not be advisable to deal with the matter at this stage. I reserve my right to file further and fuller affidavit as and when required. I however categorically state that I officer in Chief Minister office has not exercised any influence in the matter of transfer."

8. At the hearing of the petition, the learned counsel for the petitioner referred to the above pleadings and submitted that a strong case of mala fides was made out to interfere with the order of transfer. The learned counsel for the Government of Gujarat and respondent No. 2, the then Chief Minister, vehemently raised a preliminary contention that when respondent No. 9 himself has not challenged the order of transfer, no public interest petition can be entertained. It is further submitted that as per the catena of decisions of the Apex Court, the Court should not interfere with decision of the Government in matters of transfer and reliance has been placed on the following decisions of the Supreme Court :-

In the case of Mrs. Shilpi Bose v. State of Bihar, AIR 1991 SC 532, Their Lordships have observed as under :-

"In our opinion, the Courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any

mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest."

In the case of N.K. Singh v. Union of India,
AIR 1995 SC 423, Their Lordships have observed as under:-

" There are two aspects of transfer of a public servant holding a sensitive and important post. One aspect relates to the private rights of the public servant as an individual pertaining only to his service career. The other is concerned with prejudice to public interest irrespective of the individual interest. The element of prejudice to public interest can be involved only in transfers from sensitive and important public offices and not in all transfers. Mere suspicion or likelihood of some prejudice to public interest is not enough and there must be strong unimpeachable evidence to prove definite substantial prejudice to public interest to make it a vitiating factor in an appropriate case unless it is justified on the ground of larger public interest and exigencies of administration. Such cases would be rare and this factor as a vitiating element must be accepted with great caution and circumspection.

Transfer of a public servant from a significant post can be prejudicial to public interest only if the transfer was avoidable and the successor is not suitable for the post. Suitability is a matter for objective assessment by the hierarchical superiors in administration. To introduce and rely on the element of prejudice to public interest as a vitiating factor of the

transfer of a public servant, it must be first pleaded and proved that the replacement was by a person not suitable for the important post and the transfer was avoidable. Unless this is pleaded and proved at the threshold, no further inquiry into this aspect is necessary and its absence is sufficient to exclude this factor from consideration as a vitiating element in the impugned transfer."

9. In rejoinder, Mr Tanna, learned counsel for the petitioner submitted that the aforesaid decisions themselves recognize that the Court can interfere where the order of transfer is shown to be mala fide and has relied on the recent decision of the Supreme Court in the case of Arvind Dattatraya Dhande v. State of Maharashtra, AIR 1997 SC 3067 wherein the Apex Court has been pleased to observe that it is most unfortunate that the Government demoralizes the officers who discharge the duties honestly and diligently and brings to book the persons indulging in black marketing and contrabanding the liquor. It has been held in that case that in view of the unimpeachable and eloquent testimony of the performance of the duties by the officer, it was obvious that the transfer was not in public interest but was a case of victimisation of an honest officer at the behest of the aggrieved complainants carrying on the business in liquor and toddy. Under these circumstances, the transfer order was found nothing but mala fide exercise of the power to demoralise honest officers who would efficiently discharge the duties of a public office.

10. Having heard the learned counsel for the parties at length, we had enquired from Mr Bambhania, appearing for the State Government as to whether an inquiry is instituted against respondent No. 8 - Shri C.J. Chavda for writing the letter dated May 13, 1997 for filing "C" summary and as to what stage the disciplinary inquiry initiated against PSI Shri Gurkha had reached, especially when the affidavit dated September 2, 1997 of the Additional Chief Secretary, Home Department had already stated in para 6 (a) that whether respondent No. 8 was justified in writing a note to the D.S.P., Rajkot for filing "C" summary is a matter of scrutiny before the Government and also in view of the statement made in the said affidavit that a disciplinary inquiry was initiated against the PSI (Shri Gurkha) for filing "C" summary. The learned Government Solicitor then craved leave to take on record further affidavit-in-reply of the

Additional Chief Secretary, Home Department - Shri P.G. Ramrakhiani. In the said affidavit dated December 11, 1997, it is stated that the offence registered against Husseinbhai Alibhai and Koli Devshibhai Valjibhai was registered at Vankaner Police Station C.R. No. I-5/97 and that the PSI who had investigated the said offence submitted his report to the Police Inspector and Dy.S.P. for appropriate decision with his own observation as to "C" summary proceedings and that neither the "C" summary is submitted nor it has been acted upon by the Dy.S.P. while submitting the report before the Court. It is further stated that the authority has entrusted the proceedings for investigation to Dy.S.P., Morbi and the said proceedings are pending with the Dy.S.P.

The affidavit deals with the grievance made about political interference with the investigation of offences in the following terms:-

" It is submitted that the present Chief Minister and administration is of the view to implement and follow the norms settled under the rules of business for passing on any of the instructions and/or orders.

It is submitted that now all care and caution will be taken to see that neither the investigation is misdirected and/or intercepted by anyone nor direct instructions are passed on to the Investigation Officer in any manner.

It is submitted that Shri Chavda the then O.S.D. to Chief Minister is not in the office of the Chief Minister at present. It is further submitted that administration will take care and caution that no such action and/or instructions are issued by any of such officers attached to the Minister/Chief Minister and/or political personalities. It is submitted that it will be the endeavour of the administration to see that there is fair and free investigation by the Investigation Officer against anybody who so ever he may be."

11. It is true that ordinarily this Court exercising its writ jurisdiction under Article 226 of the Constitution would not sit in appeal over the decisions of the Government in matters of transfer, but if an order of transfer is shown to be mala fide, this court would

certainly interfere. However, the question whether an order of transfer can be challenged as mala fide in a public interest petition is not required to be examined in the facts and circumstances of the present case in view of the constructive stand adopted on either side. The learned counsel for the petitioner fairly submitted that the petitioner (Mayor of Rajkot) was not interested in any particular Officer, nor did he seek to press the prayer that respondent No. 9 be transferred back to Rajkot but his grievance was about political interference with the investigation by upright police officers. Respondent No. 1 - State of Gujarat and Respondent No. 3 - the Additional Chief Secretary, Home Department have also responded in positive terms and stated that administration will take care and caution that no such action and/or instructions are issued by any of the officers attached to the Minister/Chief Minister and/or political personalities and that Investigating Officers will be permitted to carry out the investigation in a fair and free manner against any one who so ever he may be.

12. Since it is pointed out that letter dated 13.5.1997 has not been acted upon by the Dy.S.P., Morbi who is entrusted with the investigation of the case in question, and since respondent Nos. 1 and 3 have come out with the aforesaid positive constructive stand, we have not thought it fit to go into the merits of the controversy for giving a finding whether the transfer order is mala fide or not nor do we express any opinion on the preliminary contention raised by the respondents, but we cannot help expressing our concern about the manner in which an officer of the rank of Officer on Special Duty in the office of the then Chief Minister had written the letter to the District Superintendent of Police and the Investigating Officer for directing as to what report the Investigating Officer should submit to the criminal Court. Whether the "C" summary filed by PSI Shri Gurkha was acted upon or not by the Dy.S.P. as stated in the last affidavit does not detract from the seriousness of the issue. We are, however, not required to make any further observations or to give any finding on the merits of the challenge to the order of transfer in view of the positive and constructive stand adopted on behalf of the State Government as reflected in the following paragraphs of the affidavit dated December 11, 1997 by Shri Ramrakhiani, Additional Chief Secretary to the Government of Gujarat Home Department, which bear repetition :-

" It is submitted that the present Chief Minister and administration is of the view to implement and follow the norms settled under the rules of business for passing on any of the instructions and/or orders.

It is submitted that now all care and caution will be taken to see that neither the investigation is misdirected and/or intercepted by anyone nor direct instructions are passed on to the Investigation Officer in any manner.

It is further submitted that administration will take care and caution that no such action and/or instructions are issued by any of such officers attached to the Minister/Chief Minister and/or political personalities. It is submitted that it will be the endeavour of the administration to see that there is fair and free investigation by the Investigation Officer against anybody who so ever he may be."

13. In view of the aforesaid observations, nothing further is required to be done in this petition and we close the proceedings. The petition is accordingly disposed of with no order as to costs.

Sd/-

(K. Sreedharan, C.J.)

Sd/-

(M. S. Shah, J.)